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SUPERIOR COURT OF N.J.
MERCER COUNTY
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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MERCER COUNTY
Docket No. MER-C- 24-05

PETER C. HARVEY, Attorney General of the
State of New Jersey, and JEFFREY C.
BURSTEIN, Acting Director of the New Jersey
Division of Consumer Affairs,

v.

Plaintiffs,

BLOCKBUSTER, INC., JANE AND JOHN
DOES 1-35, individually and as officers,
directors, franchisees, shareholders, founders,
owners, agents, servants and/or employees of
BLOCKBUSTER, INC. and XYZ
CORPORATIONS 1-35,

Defendants.

Civil Action

COMPLAINT

Plaintiffs Peter C. Harvey, Attorney General of the State of New Jersey, with offices located at 124 Halsey Street, Fifth Floor, Newark, New Jersey, and Jeffrey C. Burstein, Acting Director of the New Jersey Division of Consumer Affairs, with offices located at 124 Halsey Street, Seventh Floor, Newark, New Jersey, by way of this Complaint state:

JURISDICTION AND PARTIES

1. The Attorney General of the State of New Jersey ("Attorney General") is charged with the responsibility of enforcing the New Jersey Consumer Fraud Act ("CFA"), N.J.S.A. 56:8-1 et seq., and all regulations promulgated thereunder (the "Regulations"), N.J.A.C. 13:45A-1.1 et seq. The Acting Director of the New Jersey Division of Consumer Affairs ("Director") is charged with the responsibility of administering the CFA and the Regulations promulgated thereunder on behalf of the Attorney General.

2. By this action, the Attorney General and the Acting Director (collectively referred to as "Plaintiffs") seek injunctive and other relief for violations of the CFA. Plaintiffs bring this action pursuant to their authority under the CFA, specifically N.J.S.A. 56:8-8, 56:8-11, 56:8-13 and 56:8-19. Venue is proper in Mercer County, pursuant to R. 4:3-2, because it is a county in which the Defendant has advertised and/or conducted business, and in which it has maintained stores to conduct business.

3. Defendant Blockbuster, Inc. ("Blockbuster") is a Delaware corporation established on December 18, 1998. Upon information and belief, Blockbuster maintains a principal business address of 1201 Elm Street, Dallas, Texas 75270.

4. As of approximately December 22, 1998, Blockbuster was authorized to conduct business as a foreign profit corporation in the State of New Jersey (also referred to as the "State"). Blockbuster's registered agent in the State is Corporation Service Company, 830 Bear Tavern Road, West Trenton, New Jersey 08628.

5. Upon information and belief, John and Jane Does 1 through 35 are fictitious individuals meant to represent the officers, directors, franchisees, shareholders, founders, owners,

agents, servants, employees, sales representatives and/or independent contractors of Blockbuster who have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to the Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

6. Upon information and belief, XYZ Corporations 1 through 35 are fictitious corporations meant to represent any additional corporations that have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to the Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

GENERAL ALLEGATIONS COMMON TO ALL COUNTS

7. At all relevant times, Blockbuster has advertised and engaged in the retail rental and/or sale of merchandise to consumers in this State and elsewhere including, but not limited to, DVDs, VHS tapes and video and computer games.

8. Defendant advertises and otherwise offers merchandise for sale to consumers in the State and elsewhere through various mediums including, but not limited to, nationwide television and radio commercials, newspaper advertisements and through the internet.

9. Upon information and belief, Defendant operates approximately one hundred and seventy (170) stores in the State. Upon information and belief, some of these stores are corporate-owned and some are owned and operated by franchisees.

10. Defendant also conducts sales and rentals to consumers in the State and elsewhere through their website www.blockbuster.com

11. Upon information and belief, the rental and sale policies and advertising campaigns for all Blockbuster stores are established by Defendant.

12. Upon information and belief, consumers who wish to rent merchandise from Defendant must open a membership account. Such account may be secured by a credit card.

13. Upon information and belief, prior to January 1, 2005, Defendant's rental policy permitted consumers to rent videos for a fixed period of time. Any rentals returned after the applicable due date and time were considered late and a monetary fee for the lateness was assessed by Blockbuster. Defendant identified these fees as "late fees."

14. As of January 1, 2005, Defendant implemented a change of its rental policy as it applies to late fees. Upon information and belief, not all franchise stores participate in this policy.

15. To notify consumers about this change in policy, Defendant engaged in nationwide television, print and internet advertising touting its new "The End of Late Fees" or "No More Late Fees" policy. Such advertising occurred at least as of January 1, 2005. Upon information and belief, Defendant also notified consumers via e-mail of the new policy.

16. In one such television advertisement, a Blockbuster employee is shown in front of a Blockbuster store with a large concealed banner, which he reveals to a group of waiting consumers. The revealed sign states in large letters "No More Late Fees."

17. In such advertisement, a very small, limited disclaimer appears briefly superimposed on the screen and states "Participating Stores Only. Membership Rules Apply for Rentals. See Store for Complete Details." The advertisement does not include any other terms and conditions of the policy.

18. Upon information and belief, Defendant's radio advertising of the "No More Late Fees" policy does not describe any of the terms and conditions of the policy and offers the brief disclaimer "Details At Participating Blockbuster Stores."

19. Defendant's internet home page prominently advertises "The End of Late Fees" and directs consumers to an additional page for further information. On that page, Defendant prominently states "Celebrate the End of Late Fees." Defendant further states "[t]here are no more late fees at BLOCKBUSTER. And that's on every movie and every game in the entire store - no matter how you rent. So if you need an extra day or two with your movies and games, go ahead and take 'em. Relax. Enjoy them without the stress of late fees."

20. Defendant's internet site requires consumers to go to a third internet page, titled "Customer Service," for further information on the policy. Consumers must then click on the "Frequently Asked Questions" tab, which produces a dialogue box wherein consumers must either scroll down through 213 "Frequently Asked Questions" topics or enter a keyword search. Consumers must then click on individual questions to obtain some of the terms and conditions of the policy, which are as follows: (a) Defendant will automatically convert the rental to a sale on the eighth (8th) day after the rental period; (b) Defendant will charge a consumer's credit card or membership account for such sale; (c) if the consumer returns the item within thirty (30) days of the sale date, Defendant will credit the consumer's credit card or membership account; and (d) Defendant will charge consumers an undefined "minimal restocking fee," plus applicable taxes.

21. Upon information and belief, certain franchise stores provide for a six (6) day policy (rather than Defendant's advertised seven (7) day policy) wherein the conversion from a rental to a sale occurs on the seventh (7th) day (rather than the eighth (8th) day).

22. Upon information and belief, Defendant fails to disclose to consumers the precise "sale price" they will be assessed for overdue rentals.

23. Upon information and belief, the restocking fee applies to each overdue rental item.

24. Upon information and belief, Defendant's restocking fee for its corporate-owned stores is \$1.25. Upon information and belief, the restocking fee may differ in certain franchise stores and can be as high as \$4.50. Upon information and belief, Defendant does not disclose the precise amount of the restocking fee in its television, radio, newspaper print advertisements, on the internet or in store brochures.

25. In its advertising of "The End of Late Fees" "No More Late Fees" policy, Defendant does not prominently advertise that not all stores participate in the policy. Additionally, Defendant does not provide a method for consumers to identify "Participating Stores."

26. Defendant's corporate stores and participating franchise stores prominently display in their windows signage regarding the "No More Late Fees" policy that neither contain the terms and conditions of the policy, nor any disclaimer. Some signage simply refers consumers to a store associate for details.

27. Upon information and belief, store associates and personnel fail to disclose to consumers the complete terms and conditions or provide inconsistent information to consumers regarding "The End of Late Fees" "No More Late Fees" policy (e.g. conversion of rental to sale and restocking fee).

28. Upon information and belief, Defendant's non-participating franchise stores do not prominently disclose that they continue to charge late fees and do not participate in "The End of Late Fees" "No More Late Fees" policy.

COUNT I

VIOLATIONS OF THE CFA BY DEFENDANT
FALSE PROMISES OR MISREPRESENTATIONS

29. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 28 above as if more fully set forth herein.

30. The CFA, N.J.S.A. 56:8-2, prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing[] concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise

31. In advertising and operating its stores, Defendant has engaged in the use of unconscionable commercial practices, deception, fraud, false pretenses, false promises, misrepresentations, and/or the knowing concealment, suppression, or omission of material facts.

32. Defendant's conduct in violation of the CFA includes, but is not limited to, the following false promises and/or misrepresentations:

- a. Providing consumers with misleading information as to the nature of Defendant's "The End of Late Fees" "No More Late Fees" policy;
- b. Engaging in advertising that misleads consumers into believing that they will not incur any fees in connection with their rental;
- c. Prominently displaying in-store signage that misleads consumers into believing that they will not incur any fees in connection with their rental; and
- d. Providing consumers, through store personnel, with incomplete and/or inconsistent information as to the policy.

33. Each false promise and/or misrepresentation constitutes a separation violation under the CFA, N.J.S.A. 56:8-2.

COUNT II

VIOLATIONS OF THE CFA BY DEFENDANT KNOWING OMISSIONS OF MATERIAL FACTS

34. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 33 above as if more fully set forth herein.

35. Defendant has engaged in unlawful acts by the knowing concealment, suppression or omission of material facts to consumers including, but not limited to, the following:

- a. Failing to disclose in television, radio and newspaper advertising the material terms of "The End of Late Fees" "No More Late Fees" policy;
- b. Failing to disclose, through store personnel, the material terms of "The End of Late Fees" "No More Late Fees" policy, such as charging customers restocking and sales fees as a substitute for late fees;
- c. Failing to disclose, through store signage, which franchise stores do not participate in the "The End of Late Fees" "No More Late Fees" policy; and
- d. Failing to disclose to consumers the precise "sale price" they will be assessed for overdue rentals.

36. Each knowing concealment, suppression or omission of material fact constitutes a separation violation under the CFA, N.J.S.A. 56:8-2.

COUNT III

VIOLATIONS OF THE CFA BY DEFENDANT UNCONSCIONABLE COMMERCIAL PRACTICES

37. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 36 above as if more fully set forth herein.

38. Defendant has engaged in fraudulent and/or unconscionable commercial practices including, but not limited to:

- a. Failing to clearly and conspicuously disclose the terms of "The End of Late Fees" "No More Late Fees" policy in its advertisements, in-store signage and through store personnel;
 - b. Failing to clearly and conspicuously disclose to consumers that there is a restocking fee that replaces the late fee;
 - c. Failing to clearly and conspicuously disclose to consumers the precise amount of the restocking fee and that the restocking fee is for each overdue item;
 - d. Charging consumers different restocking fees in different franchise stores;
 - e. Failing to clearly and conspicuously disclose to consumers the fact that their overdue rental will be converted to a sale;
 - f. Failing to clearly and conspicuously disclose the varying time frame for the conversion of a rental to a sale in its certain franchise stores;
 - g. Failing to clearly and conspicuously disclose to consumers those franchise stores that are not participating in "The No More Late Fees" "End of Late Fees" policy;
 - h. Prominently displaying in-store signage that neither discloses the terms and conditions of the policy, nor any disclaimer;
 - i. Prominently displaying in-store signage that fails to disclose the terms and conditions of the policy, but simply refers the consumer to a store associate for details; and
 - j. Providing consumers, through store associates and personnel, with incomplete and/or inconsistent information as to the policy.
39. Each unconscionable commercial practice constitutes a separation violation under the

CFA, N.J.S.A. 56:8-2.

COUNT IV

**VIOLATIONS OF THE ADVERTISING
REGULATIONS BY DEFENDANT**

40. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 39 above as if more fully set forth herein.

41. The Merchandise Advertising Regulations, N.J.A.C. 13:45A-9.1 et seq., promulgated pursuant to the CFA (hereinafter "Advertising Regulations"), address, among other issues, general advertising practices and price reduction advertisements.

42. Specifically, the Advertising Regulations governing general advertising practices provide, in relevant part:

- (a) Without limiting the application of N.J.S.A. 56:8-1 et seq., the following practices shall be unlawful with respect to all advertisements:

....

5. The use of any type, size, location, lighting, illustration, graphic depiction or color resulting in the obscuring of any material fact.

....

9. The making of false or misleading representations of facts concerning the reasons for, existence or amounts of price reductions, the nature of an offering or the quantity of advertised merchandise available for sale.

[N.J.A.C. 13:45A-9.2(a)(5), (9).]

43. Defendants violated the Advertising Regulations by engaging in certain conduct including, but not limited to:

- a. In Defendant's print advertising of the "End of Late Fees" "No More Late Fees" policy, using very small disclaimers at the bottom of the page on which the advertisement appears in violation of N.J.A.C. 13:45A-9.2(a)(5);

- b. In Defendant's television advertising of the "End of Late Fees" "No More Late Fees" policy, using very small, lightly colored disclaimers that appear only briefly superimposed over the body of the advertisement and advise consumers only to see participating stores for details in violation of N.J.A.C. 13:45A-9.2(a)(5); and
- c. Making false or misleading representations of facts concerning the nature of the "End of Late Fees" "No More Late Fees" policy; (i.e., representing that there are no more fees associated with an overdue rental, when in fact, overdue rentals are converted to sales and are subject to restocking fees), in violation of N.J.A.C. 13:45A-9.2(a)(9).

44. Each violation of the Advertising Regulations constitutes a per se violation of the CFA, N.J.S.A. 56:8-2.

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing allegation, Plaintiffs respectfully request that the Court enter judgment:

- a. Finding that the acts and omissions of the Defendant constitutes multiple instances of unlawful practices in violation of the CFA, N.J.S.A. 56:8-1 et seq., and the regulations promulgated pursuant thereto, specifically the Merchandise Advertising Regulations, N.J.A.C. 13:45A-9.1 et seq.;
- b. Permanently enjoining Defendant and its officers, directors, franchisees, shareholders, founders, owners, agents, servants, employees, sales representatives, corporations, subsidiaries, affiliates, successors, assigns and all other persons or entities directly under their control, from engaging in, continuing to engage in, or doing any acts or practices in violation of the CFA, N.J.S.A. 56:8-1 et seq. and the Merchandise Advertising Regulations, N.J.A.C. 13:45A-9.1 et seq.;
- c. Assessing the maximum statutory civil penalties against the Defendant for each and every violation of the CFA, in accordance with N.J.S.A. 56:8-13;
- d. Directing the assessment of costs and fees, including attorneys' fees, against the Defendant for the use of the State of New Jersey, as authorized by the CFA, N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19;

- e. Directing the assessment of restitution amounts against the Defendant to restore to any affected person, whether or not named in this Complaint, any money or real or personal property acquired by means of any practice alleged herein to be unlawful and found to be unlawful, as authorized by the CFA, N.J.S.A. 56:8-8; and
- f. Granting such other relief as the interests of justice may require.

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: _____
Cathleen O'Donnell
Deputy Attorney General
Division of Law

DATED: February 18, 2005
Newark, New Jersey

RULE 4:5-1 CERTIFICATION

I certify, to the best of my information and belief, that the matter in controversy in this action involving the aforementioned violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. is not the subject of any other action pending in any other court of this State. I am aware that certain other private contract, personal injury, tort, real property, anti-discrimination, products liability and patent actions have been brought against the Defendant, but have no direct information that any such actions involve consumer fraud allegations. I further certify that the matter in controversy in this action is not the subject of a pending arbitration proceeding, nor is any other action or arbitration proceeding contemplated. I certify that there is no other party who should be joined in this action.

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: _____
Cathleen O'Donnell
Deputy Attorney General
Division of Law

DATED: February 18, 2005
Newark, New Jersey

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Cathleen O'Donnell, Deputy Attorney General, is hereby designated
as trial counsel on behalf of Plaintiffs.

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: _____
Cathleen O'Donnell
Deputy Attorney General
Division of Law

DATED: February 18, 2005
Newark, New Jersey